

Mary Cottrell, Secretary  
Department of Telecommunications and Energy  
One South Station, 2nd Floor  
Boston, MA 02110

September 15, 2004

RE: Fitchburg Gas and Electric Light Company, D.T.E. 04-48

Dear Secretary Cottrell:

On September 7, 2004, Fitchburg Gas and Electric Light Company ("Fitchburg" or "Company") filed a motion to strike portions of the Attorney General's Reply Brief. The Company seeks 1) to prevent incorporation by reference of affidavits filed in the 2003 NSTAR pension case, and 2) to strike arguments in paragraph three of the Reply Brief related to these affidavits.<sup>1</sup> Fitchburg's Motion to Strike, p. 1. The Attorney General submits this letter as his opposition to the Company's motion.

The Department of Telecommunications and Energy ("Department") should deny the Company's motion to strike since reference to the affidavits does not unfairly surprise the Fitchburg. Fitchburg intervened in the NSTAR pension case, so received copies of these affidavits in 2003. *NSTAR*, D.T.E. 03-47-A, p. 1 (2003). Since the Company argued in its Initial Brief that "[t]he formula for calculating the PAF is the same as the Department approved in D.T.E. 03-47-A," Company Brief, p. 13, Fitchburg should not be surprised if the Attorney General raises the same concerns in rebuttal in this case as he did in D.T.E. 03-47-A. The Attorney General has not submitted new facts or arguments -- like an updated spread sheet filed

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<sup>1</sup> Fitchburg seeks to strike the follow sections:

The NSTAR pension formula contained inputs that involve subjective and actuarial judgement. By of illustration, rather than limitation, some of these inputs include: 1) the actuarial valuation report used, 2) the selection of the discount rate, 3) the selection of the return on trust fund assets, 4) the selection of a wage base increase factor, 5) the actuarial assumptions included in the underlying actuarial tables, i.e. mortality, disability, etc., used in the related calculations, and 6) the underlying data used to derive the trends in health care, medicare and prescription drug costs. *See* Gotham Affidavit submitted in D.T.E. 03-47-A. Some of the the inputs also involve calculations, formulas, assumptions, and allocations of the pension and PBOPs costs among the distribution companies and related organizations. *See* Affidavit of Newhard submitted in D.T.E. 03-47-A.

after the close of the record -- but rather has drawn the Department's attention to existing concerns already on file in a related case. The Department's regulations specifically permit such a reference. 220 C.M.R. § 1.10(3) ("Any matter contained in any . . . documents in the possession of the Department of which a party . . . desires to avail itself . . . shall be offered and made part of the record in the proceeding.")

The complexity of the Company's formula is obvious. Given the existing record in this proceeding and the general accounting and actuarial issues inherent in the field of pensions and post-retirement benefits other than pensions, the information contained in the portions of Reply Brief the Company seeks to excluded could be inferred from the "logic of experience." Boston Gas Company v. Department of Telecommunications & Energy, 436 Mass. 233, 238 (2002). Granting Fitchburg's motion to strike may disable the Department from exercising its own discretion and expert judgment.

For these reasons, the Department should deny Fitchburg's motion to strike.

Respectfully submitted,

Alexander J. Cochis  
Assistant Attorney General

cc: Service list